

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Access Charge Reform for Incumbent )

Local Exchange Carriers Subject to )

Rate-of-Return Regulation )

CC Docket No. 98-77

REPLY COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

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## SUMMARY

OPASTCO supports the notion of access charge reform for RoR LECs. However, the myriad differences between RoR and price cap LECs that have been affirmed by commenters indicate that reform cannot merely duplicate the access rules adopted for price cap carriers. A different approach is necessary to protect universal service in the context of a competitive marketplace.

For instance, virtually all commenters agree that the ceilings on the SLCs assessed by RoR carriers must be no higher than the national averages of the respective SLCs assessed by price cap LECs. MCI's call to raise RoR LECs' multi-line business SLC ceiling to the \$9.00 cap established for price cap carriers must be rejected on the grounds that it would not comply with the rural/urban rate comparability and affordability requirements of the 1996 Act, would entice competitors to cherry pick incumbents' best customers, and would have an adverse effect on rural economic development.

Long distance geographic rate averaging must be vigilantly enforced by the FCC in light of RoR carriers' significantly higher per-loop revenue requirements compared with price cap LECs. Geographic rate averaging will also be necessary to permit RoR LECs to adopt PICC levels that are appropriate for their own operating and marketplace circumstances.

Commenters have pointed out the numerous pitfalls of the Commission's policy to distinguish between primary and non-primary residential lines. For example, assessing higher SLCs and PICCs on non-primary lines could have a negative impact on demand for additional lines into the home, which are often used for access to information services in rural areas. Also

noted were the competitive neutrality, administrative, and customer privacy problems that would arise. OPASTCO recommends that the Commission abandon its distinction for all carriers but in no case should it be applied to RoR LECs.

OPASTCO agrees with those commenters who state that the Commission should not take any premature permanent action that would jeopardize the commitment to maintaining the existing levels of universal service support for rural LECs prior to the adoption of a new high-cost mechanism sometime after 2001. For example, the Commission should not attempt to eliminate the CCL charge and the TIC at this time. Similarly, it would be premature for the Commission to consider a rate represetation proceeding, as AT&T recommends, while the complete regulatory paradigm under which RoR LECs operate remains in limbo. In addition, the Commission should be prepared to revisit the decisions it makes at this juncture once separations reform and a new high-cost mechanism for rural carriers have been completed.

Many commenters have stressed RoR LECs' need for immediate pricing flexibility, concurrent with changes to the access rules. RoR LECs are facing competition for their access services today. Thus, pricing flexibility cannot wait until a subsequent phase of this proceeding, nor should it be conditioned on the arrival of a wireline local exchange competitor or a request for unbundled network elements.

Pricing flexibility is necessary to achieve the Commission's goal of fostering efficient competition and to uphold its mandate to preserve universal service. If carriers are required to average their access rates over an entire study area, the mere shifting of costs from per-minute to flat-rated charges will not be enough to prevent competitors from cream skimming the LEC's

few high-volume, low-cost customers. It is these customers that represent a significant portion of RoR LECs' revenues and without them, the provision of affordable service to the remaining higher-cost residential and small business subscribers may be imperiled.

Therefore, OPASTCO agrees with those commenters who urge the Commission to permit RoR LECs to offer term and volume discounts to large-volume customers on a contract basis. OPASTCO also supports pricing based on zones. In addition, the Commission should work with NECA to develop ways to offer NECA pool members pricing flexibility without having to exit the pools. Both contract pricing and zone pricing would work toward creating a sustainable, efficient, and neutral competitive environment while allowing RoR LECs to continue fulfilling their universal service obligations.

In addition to pricing flexibility, the Commission should quickly initiate a proceeding to significantly reduce the unnecessary regulatory burdens placed on RoR LECs. The Commission has already taken a step in the right direction by proposing to streamline its Part 69 waiver process. This should be adopted immediately. The next step should be to simplify and expedite RoR LECs' tariff filing process so that they can react to the needs of customers with the same nimbleness of their competitors and provide better choices for consumers.

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ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. INTRODUCTION**

1. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to the FCC's Notice of Proposed Rulemaking (NPRM) on Access Charge Reform for Rate-of-Return (RoR) incumbent local exchange carriers (LECs).<sup>1</sup> OPASTCO is a national trade association representing over 500 independently owned and operated telephone companies serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over two million customers. Nearly all of OPASTCO's members are RoR regulated LECs.

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<sup>1</sup> *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Notice of Proposed Rulemaking, FCC 98-101 (rel. June 4, 1998) (NPRM, Notice).

2. OPASTCO supports access reform for RoR carriers. These LECs need changes in their rate structures, coupled with pricing flexibility, to address the challenges of a competitive, post-1996 Act environment. At the same time, reform cannot simply be a "rubber stamp" of the changes implemented for the price cap LECs. The overwhelming majority of commenters in this proceeding have noted the vast differences that exist between RoR carriers and price cap LECs. These differences include a much larger percentage of revenues derived from access charges, significantly higher operating costs, thinner markets, reliance on a few high-volume business customers for a major part of total revenues, and competition that selectively targets those best customers. Also recognized by commenters are the differences that exist among RoR carriers themselves.

3. Commenters have also indicated the potential universal service implications of the Commission's decisions in this proceeding. One such commenter, Fred Williamson & Associates, remarks that, "[u]nlike the larger companies, small companies have little, if any, opportunity to recover access revenue losses and may ultimately be forced to institute disproportionate increases in local service rates in order to compensate for losses created by changes in the access cost recovery processes."<sup>2</sup> Thus, changes the Commission makes to the access charge rules must recognize the differences of and among RoR LECs and ensure that the 1996 Act's universal service mandates are achieved in the context of a competitive marketplace. This will necessarily include the immediate adoption of pricing flexibility, and the consideration of other deregulatory measures, as urged by commenters. Pricing flexibility and regulatory

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2 Fred Williamson and Associates, Inc. (FW&A), p. 4  
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reform are critical pieces of the access reform puzzle that will allow RoR LECs to offer more competitive rates and services to high-volume customers than would be the case with rate structure modifications alone. Retention of these customers is critical to serving all rural subscribers at reasonable rates.

## **II. IN ORDER TO PROTECT UNIVERSAL SERVICE IN RURAL AREAS, ROR ACCESS REFORM CANNOT SIMPLY MIMIC PRICE CAP REFORM**

### **A. Commenters are virtually unanimous that the ceilings on RoR LECs' SLCs should be no higher than the national averages of the respective SLCs being assessed by price cap LECs**

4. Commenters agree that the ceilings adopted for RoR LECs' residential and multi-line business subscriber line charges (SLCs) should be no higher than the national averages of the respective SLCs assessed by price cap carriers.<sup>3</sup> These commenters, like OPASTCO, recognize the 1996 Act's requirements for rural/urban end-user rate comparability and affordability<sup>4</sup> and are concerned with the deleterious effect that higher SLCs could have on rural economic development.

5. In stark contrast, MCI recommends that the ceiling on RoR carriers' multi-line business SLCs should be raised to the same ceiling established for price cap carriers.<sup>5</sup> While acknowledging that this would cause most RoR LECs' multi-line business SLCs to immediately

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<sup>3</sup> See, United States Telephone Association (USTA), p. 10; John Staurulakis, Inc. (JSI), p. 10; National Rural Telecom Association and National Telephone Cooperative Association (NRTA/NTCA), pp. 19-21; TDS Telecommunications Corp. (TDS), pp. 13-15; Minnesota Independent Coalition (Minnesota Coalition), pp. 9-10; Telephone Association of New England (TANE), p. 7; Western Alliance, pp. 13-15; Home Telephone Company, Inc. (Home), pp. 5-6; FW&A, pp. 8-9.

<sup>4</sup> 47 U.S.C. § 254(b)(1), (3).

<sup>5</sup> MCI, pp. 11-14.



increase to the \$9.00 cap, MCI attempts to argue that this would still be "reasonably comparable" to the current \$7.15 nationwide average of price cap LECs' multi-line business SLCs. This defense fails on two counts.

6. First, MCI does not consider that while the \$7.15 national average of price cap LECs' multi-line business SLCs is expected to remain constant, or possibly even decline, over the next few years, the average of RoR LECs' multi-line business SLCs under the price cap ceiling would continue to rise annually by the rate of inflation, thereby increasing the rate disparity every year.<sup>6</sup>

Second, any dollar difference in the SLCs assessed by RoR and price cap LECs is further exacerbated by the considerably smaller local calling scope of RoR LEC service areas, which causes customers of these LECs to incur more toll charges than the customers of price cap carriers.<sup>7</sup>

7. MCI also argues that by charging a multi-line business SLC below \$9.00, RoR carriers would be creating an "impermissible" cross-subsidy from high-volume to low-volume long distance customers.<sup>8</sup> However, Congress recognized that its objective of eliminating implicit subsidies embedded in support mechanisms may take time, so that its mandates for rural/urban rate comparability and affordability would not be thwarted. Thus, the 1996 Act's Joint Explanatory Statement states that "[t]o the extent possible, the conferees intend that any support

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<sup>6</sup> For example, using the same ceilings adopted for price cap carriers, USTA estimates that the average of RoR carriers' multi-line business SLCs would equal \$9.83 in 2001. In contrast, the average of price cap LECs' multi-line business SLCs in 2001 is estimated at \$7.01. USTA, Attachment B.

<sup>7</sup> See, JSI, p. 16; USTA Strategic Policy Research (SPR) Affidavit, pp. 8-9; Western Alliance, p. 5.

<sup>8</sup> MCI, p. 13.

mechanisms continued or created under new section 254 *should* be explicit, rather than implicit..."<sup>9</sup> The Commission recognized this as well in its Price Cap Access Order.<sup>10</sup>

8. Furthermore, MCI's assurances notwithstanding,<sup>11</sup> a higher multi-line business SLC would lead to cream skimming by neighboring price cap LECs and other competitors. While recovering a greater share of non-traffic-sensitive (NTS) costs through flat-rated charges may somewhat improve the efficiency of RoR LECs' rate structures, a higher uniform end-user SLC, imposed by regulatory constraints, would obviously attract unregulated competitors to enter the market and cherry pick the low-cost, high-volume business customers.<sup>12</sup> This would cause the incumbent to lose a crucial revenue stream from these customers and threaten rate affordability for the remaining residential and small business subscribers. In addition, for those smaller businesses in RoR LECs' service areas that do not attract competitive offers, a higher SLC may lead to a decision that they must reduce their costs -- and, hence, the LEC's revenues -- by discontinuing service on one or more of their existing lines.<sup>13</sup> Finally, even if a higher multi-line business SLC did not attract competition, it may cause RoR LECs' few high-volume business customers to relocate existing or future business operations.<sup>14</sup> Such an outcome would have a severe economic impact on the LEC, its customers, and the community as a whole.

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9 Joint Explanatory Statement, p. 131. (emphasis added)

10 *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, para. 9 (1997) (Price Cap Access Order). *See also*, Minnesota Coalition, pp. 6-7.

11 MCI, pp. 13-14.

12 This is why it is so crucial for pricing flexibility measures to be adopted at the same time as rate structure modifications. *See*, Sec. III *infra*.

13 *See*, Western Alliance, pp. 11-12.

14 *See*, Minnesota Coalition, pp. 9-10.

require vigilant enforcement on the part of the FCC to enforce the geographic averaging mandate of Sec. 254(g) of the 1996 Act. OPASTCO agrees with the comments of NRTA/NTCA when they state:

The mandates for geographic rate averaging and reasonably comparable rural and urban rates in Section 254 require the averaging of interexchange carriers' charges to their interstate customers regardless of whether the IXC recovers its access costs through usage-based long distance rates or a flat-rated pass through of PICCS to IXCs' end users. To comply with the plain language of the law and the intent of Congress, the Commission should not permit IXCs to pass the PICCs paid to a non-price cap ILEC through to the IXC's customers in that LEC's area at any level above the nationwide average of PICC pass-through charges recovered in areas served by price cap LECs.<sup>16</sup>

12. As long as the Commission upholds its obligation to monitor and enforce the geographic rate averaging mandate of Sec. 254(g), OPASTCO believes that RoR LECs should have the flexibility to determine the level of their residential and multi-line business PICCs. Some carriers may determine that a higher than average PICC would negatively effect universal service due to the shift in costs from heavy long distance users to lighter users or non-users of long distance services. However, for other RoR carriers that face competitors looking to steal their best customers, recovering greater amounts of their common line revenue requirements through flat-rated PICCs may be deemed essential.<sup>17</sup> Supporting such a flexible approach is the National Exchange Carrier Association (NECA). They state:

In some cases, carriers may find it possible...to recover higher portions of non-traffic sensitive costs via flat-rated charges, without significantly harming universal service in their areas. Rule revisions that would permit these carriers to proceed with implementing access reform could accomplish the Commission's

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<sup>16</sup> NRTA/NTCA, p. 23.

<sup>17</sup> Of course, a LEC's ability to determine PICC levels for its entire study area is no substitute for the more comprehensive pricing flexibility that is necessary to retain high-volume customers.

9. For all of the above reasons, the Commission must reject MCI's call to impose on RoR carriers the SLC ceilings adopted for price cap LECs. Instead, the Commission should adopt SLC ceilings equal to the national averages of the SLCs actually being assessed by price cap LECs, in order to preserve rate comparability, affordability, and economic development in rural areas.

**B. Strict enforcement of the long distance geographic rate averaging mandate will allow carriers to determine the PICC levels that are right for their operating environment**

10. As stated in its initial comments, OPASTCO believes that RoR carriers should have the flexibility to establish presubscribed interexchange carrier charges (PICCs) that are appropriate for their own individual circumstances.<sup>15</sup> Allowing RoR LECs to determine their own PICC levels will aid them in recovering their higher per-loop common line revenue requirements that are allocated to the interstate jurisdiction.

11. OPASTCO recognizes that some commenters recommend that RoR LECs' PICCs be capped at the price cap national averages out of concern that higher PICCs would be passed through to customers unaveraged by interexchange carriers (IXCs). OPASTCO understands and shares this concern. However, these commenters fail to indicate how a higher than average PICC places any more pressure on IXCs to deaverage their rates than does a higher than average carrier common line (CCL) charge. No matter how RoR carriers' common line costs are divided up between flat-rated PICCs and a per-minute CCL charge, there is no escaping the fact that their per-loop interstate revenue requirements are higher than that of price cap LECs. This will

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<sup>15</sup> OPASTCO, pp. 4-5.

goals in this proceeding without harming carriers and customers located in more rural and remote areas.<sup>18</sup>

13. OPASTCO would therefore urge the Commission to recognize the differences that exist among RoR carriers and permit them to set PICC levels that are appropriate for their particular operating environment. At the same time, the Commission must enforce geographic rate averaging to ensure that customers of RoR LECs have access to the same long distance rates and charges as urban customers, as Congress intended.

**C. The Commission's distinction between primary and non-primary residential lines is inconsistent with Congressional and FCC objectives and should not be applied to RoR carriers**

14. Commenters in this proceeding have expounded on the numerous pitfalls inherent in the Commission's policy, already in place for price cap carriers, to assess higher SLCs and PICCs on non-primary residential lines.<sup>19</sup> For example, commenters have raised concerns over the chilling effect the Commission's arbitrary distinction could have on the demand for second lines into the home, which are typically used for access to the Internet and other information services. Such an outcome would not only be at odds with the 1996 Act's goal of universal access to advanced services, it would also defeat the Commission's goal of its primary/non-primary line distinction to begin with, which is to offset a greater portion of carriers' common line revenue requirements through flat-rated charges.

15. Commenters also raise the issue of competitive neutrality and the incentive that a primary/non-primary line distinction provides customers to use a competing carrier's service for

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<sup>18</sup> NECA, pp. 4-5.

<sup>19</sup> See, USTA, pp. 12-14; NECA, pp. 5-6; NRTA/NTCA, pp. 26-28; TDS, pp. 13-15; Western Alliance, p. 14; Anchorage Telephone Utility Telecommunications (ATU), pp. 6-7.

the purchase of additional lines solely to avoid higher charges. Also discussed by commenters are the "insurmountable practical, administrative and customer privacy problems"<sup>20</sup> that would arise. In addition, absent the ability of carriers to identify the primary residential line by some method other than customer self-certification, the economic incentive for subscribers to game the system will be great.

16. It can be surmised that the failure of the Commission to release an Order in CC Docket No. 97-181, Primary Line Definition, nearly one year after comments were filed in that proceeding, is a result of its realization that coming up with any remotely workable uniform definition is impossible. The Commission should once and for all acknowledge the futility of establishing such a distinction between residential lines and abandon the policy for all carriers. If, however, the Commission is insistent on maintaining its distinction for price cap carriers, at the very least it should not impose the policy on RoR carriers and their rural subscribers.

**D. Access reform cannot be completed until it is coordinated with separations reform and the new high-cost support mechanism adopted for rural LECs**

17. Many commenters have explained the critical links between access charges, high-cost support, and separations rules<sup>21</sup> which collectively enable the provisioning of quality telecommunications service to rural Americans at reasonable rates. Some commenters have gone so far as to recommend that access reform be delayed entirely until the completion of one or both of these other proceedings.<sup>22</sup> While it would have been ideal if all of these issues were addressed

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<sup>20</sup> TDS, p. 14.

<sup>21</sup> See, for example, NRTA/NTCA, pp. 2-4, 10-12; TDS, pp. 8-11; Home, pp. 4-5; TANE, pp. 1-2; FW&A, 6.

<sup>22</sup> See, for example, NECA, pp. 2-3; JSI, p. 2.

in a more comprehensive fashion, OPASTCO believes that the current pressures of a competitive marketplace require that the Commission begin now to adopt a more economically efficient access rate structure, along with more liberal pricing rules.

18. Nevertheless, OPASTCO agrees with commenters that the Commission should not take any premature permanent action here that would jeopardize the commitment to maintaining the existing levels of high-cost support for rural LECs, prior to the adoption of a new high-cost mechanism sometime after January 1, 2001.<sup>23</sup> For example, commenters, along with OPASTCO, have stressed the importance of not completely eliminating the per-minute CCL charge and the transport interconnection charge (TIC), at least until the adoption of a new universal service mechanism for rural carriers.<sup>24</sup> Owing to the significantly higher per-loop revenue requirements of RoR LECs, hastily moving all of these costs into flat-rated charges could severely impact rate comparability and affordability in rural areas. Furthermore, "[i]f changes result in revenue losses without appropriate transitions, the unintended consequences will be even more harsh for rural telecommunications."<sup>25</sup>

19. In this regard, the Commission must reject AT&T's recommendation to reduce RoR LECs' rate levels by lowering their authorized rate-of-return.<sup>26</sup> RoR LECs' access rate levels are simply indicative of their costs of providing service to rural and high-cost areas, and are but one component of a larger cost recovery mechanism. It would be premature for the Commission to even entertain the notion of a rate represetation proceeding while the complete regulatory

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23 See, TDS, p. 5; NRTA/NTCA, p. 3; Minnesota Coalition, p. 5.

24 See, for example, USTA, pp. 15-17, 20-22; TDS, pp. 18-21.

25 NRTA/NTCA, p. 3.

26 AT&T Corp., pp. 6-7.

paradigm under which RoR carriers operate is in limbo. Until it is better understood how RoR LECs will remain operational in a competitive, post-1996 Act universe, it is impossible to evaluate the long term risk of these companies. In any event, rate represetion is completely out of the realm of this proceeding and should therefore be summarily dismissed.

20. RoR LECs have made substantial investments in their networks over recent years to provide rural customers with modern telecommunications services; some, such as equal access and 800 number portability, were made at the insistence of regulators and directly benefit IXCs.<sup>27</sup> Given the large portion of revenues RoR LECs derive from access charges, changes that prevent carriers from recovering the costs of their investments will impede affordable service for these LECs' customers and deter the further network investment necessary to permit rural Americans to participate in the information revolution.<sup>28</sup> The Commission should therefore proceed with caution and foresight as it begins reforming access for RoR carriers, and be prepared to revisit the decisions it makes at this juncture once separations reform and a new high-cost mechanism for rural carriers have been completed. Only then will the Commission be able to establish whether its rules, taken in their entirety, "fulfill the Congressional mandates in § 254, as well as the Act's procompetition and deregulatory purposes."<sup>29</sup>

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27 See, NRTA/NTCA, pp. 21-22; TDS, 18-19; Western Alliance, pp. 6-8.

28 See, NRTA/NTCA, p. 5; TDS, p. 8; Western Alliance, p. 8.

29 NRTA/NTCA, p. 11.



### **III. PRICING FLEXIBILITY AND RELAXED REGULATION ARE AN INTEGRAL PART OF ACCESS CHARGE REFORM FOR ROR LECs**

#### **A. Pricing flexibility measures should be adopted immediately with the first Order in this proceeding**

21. The message to the Commission could not be more clear: RoR LECs need pricing flexibility and they need it now.<sup>30</sup> Numerous commenters, like OPASTCO, have demonstrated that RoR LECs are not immune to competition. They have also explained the risks that are posed to the provision of service in their areas. These very real threats that RoR LECs face today necessitate action from the Commission which cannot be delayed until a "subsequent phase of this proceeding."<sup>31</sup>

22. The Commission should not rest easy in the belief that rural carriers have time to spare before they are faced with competition. The provisions of Sec. 251(f) in no way prevent access bypass from IXC's, RBOC's, and other facilities-based carriers, who have no need for unbundled network elements (UNEs) or wholesale service offerings. It is this type of competition from competitive access providers (CAPs) that many RoR LECs are facing today in their service areas.<sup>32</sup> Thus, as several commenters have expressed,<sup>33</sup> the Commission must not condition

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30 See, USTA, pp. 23-26; USTA SPR Affidavit, pp. 10-21; TDS, pp. 21-23; NRTA/NTCA, pp. 12-13, 28-29; TANE, p. 9; ATU, pp. 2-4; ALLTEL Communications Services Corp. (ALLTEL), pp. 2-7; Lexcom Telephone Company (Lexcom), pp. 28-29; Home, pp. 7-8.

31 NPRM, para. 3.

32 AT&T shows real audacity when it states that RoR LECs will face almost no competition for their access services in the foreseeable future. AT&T, p. 10. In fact, AT&T offers business subscribers a service, Digital Link, which combines outbound local, long-distance, and international calling services entirely through its own network. This offering is currently available in every state except Alaska and AT&T makes no distinction between urban and rural markets. See, AT&T's web site at [http://www.att.com/att\\_digital\\_link/](http://www.att.com/att_digital_link/). See also, USTA SPR Affidavit, p. 14.

33 See, USTA SPR Affidavit, p. 13; NRTA/NTCA, pp. 15-16; ALLTEL, pp. 6-7; Home, p. 7.

pricing flexibility on the arrival of a wireline local exchange competitor or a request for UNEs. As ALLTEL puts it, “[a]fter-the-fact regulatory relief is too reminiscent of an offer of fire insurance after the house has burned.”<sup>34</sup>

23. ALLTEL’s quip is particularly apropos for RoR LECs where the inability to price flexibly will have real consequences for the provision of affordable service to high-cost rural residential customers to whom competitors will generally be uninterested in serving. RoR LECs typically have only a handful of high-volume customers in their service areas and “these customers may individually be responsible for as much as 25%-to-30% of the ILEC’s total revenues.”<sup>35</sup> Loss of these customers to competitors, therefore, would deprive RoR LECs of those subscribers’ contribution towards affordable rates throughout the higher-cost portions of their service areas. As USTA explains, “[p]ricing flexibility helps ensure recovery of the fixed costs of the public switched network, while enabling RoR LECs to respond efficiently to customers’ needs that otherwise would not be met.”<sup>36</sup>

24. The NPRM states that the goal of access reform is to “foster and accelerate the introduction of efficient competition in all telecommunications markets, pursuant to the mandate of the 1996 Act.”<sup>37</sup> It also recognizes RoR carriers’ reliance on access revenues from high-volume customers to keep rates affordable for the majority of its residential customers.<sup>38</sup> Yet, proposals put forth in the NPRM continue to shackle RoR LECs with significant pricing

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34 ALLTEL, p. 7.

35 Lexcom, p. 28.

36 USTA, p. 23.

37 NPRM, para. 2.

38 *Ibid.*, para. 12.

constraints, merely shifting costs from one tightly regulated rate mechanism to another. Rate restructuring is only part of the equation for RoR LECs. If carriers are forced to average their access rates over an entire study area, charging well above cost to their lower-cost customers, the movement of NTS costs into flat-rated charges will not be enough to prevent competitors to exploit such government-imposed inefficiencies. The Commission must therefore "begin to recognize that incumbent LECs cannot both fulfill their universal service obligations and compete using only government controlled rate structures and levels in a market contested by totally unregulated entities."<sup>39</sup>

25. In particular, OPASTCO fully supports those commenters who urge the Commission to permit RoR LECs to offer term and volume discounts to large-volume customers on a contract basis.<sup>40</sup> OPASTCO also concurs with commenters that recommend pricing based on zones.<sup>41</sup> Zone pricing should be adopted for both the common line and traffic sensitive rate elements. In addition, RoR carriers that are members of the NECA pools need flexibility as well, and the Commission should work with NECA to find ways to offer pricing latitude to these carriers without requiring them to exit the pools. Both contract pricing and zone pricing would work towards creating a sustainable competitive environment in high-cost areas by helping "to alleviate the perverse market signals and pricing distortions caused by the requirement to continue study area-wide averaging of costs for access tariffs, when CLECs need serve only those lower cost portions of the study area or the particular customers they wish to target."<sup>42</sup>

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<sup>39</sup> TANE, p. 9.

<sup>40</sup> See, ALLTEL, p. 7; Lexcom, p. 29; USTA SPR Affidavit, pp. 19-20; ATU, p. 4; TDS, p. 23.

<sup>41</sup> See, TDS, p. 23; USTA, pp. 24-26.

<sup>42</sup> TDS, p. 23.

And, as Alltel succinctly states, pricing flexibility "will promote proper utilization of telecommunications resources" and "is imperative where customers have substitutes available within the market."<sup>43</sup>

**B. The Commission should quickly initiate a proceeding to significantly reduce RoR LEC regulation**

26. In addition to pricing flexibility, the Commission also needs to begin exploring ways it can free RoR LECs from some of the unnecessary regulatory burdens that place them at a disadvantage vis-à-vis competitors. The Commission must recognize that as the national telecommunications marketplace is now open to competition, small, RoR LECs are no longer "dominant in their field of operation."<sup>44</sup> As ATU correctly explains, "[i]n a competitive market, an incumbent carrier can no longer shift costs between its former monopoly services. Thus, the fundamental proposition on which rate regulation rests - market power - is no longer valid."<sup>45</sup> When reviewing the current profusion of regulations imposed on RoR LECs, the Commission should take to heart the words of Chairman Kennard, when he spoke before the OPASTCO membership earlier this year. He stated:

Many states do not regulate your rates, and others do not regulate you at all. Notwithstanding this lack of state oversight, local rates appear relatively low and stable and we don't see widespread deterioration of service. We could benefit from a frank discussion of whether we should import some of these ideas to the interstate jurisdiction.<sup>46</sup>

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<sup>43</sup> ALLTEL, p. 7.

<sup>44</sup> NPRM, para. 103.

<sup>45</sup> ATU, p. 4. *See, also*, Alltel, p. 4. "Incumbency in no way translates to an ability to control prices."

<sup>46</sup> Remarks by William Kennard, Chairman, FCC to OPASTCO, Fort Lauderdale, FL, Jan. 12, 1998.

27. The Commission's proposal to streamline its Part 69 waiver process<sup>47</sup> is a small but helpful step in the right direction and should be adopted immediately. The next step should be to simplify and expedite the tariff filing process for RoR LECs. Specifically, OPASTCO supports the recommendation of Strategic Policy Research that RoR LECs be allowed to file revenue-neutral changes in all interstate tariffs on one days' notice with no cost support. This would be in addition to the annual or biennial tariff filings that RoR LECs make for RoR determinations.<sup>48</sup> Such deregulation would allow RoR LECs to react to the needs of customers with the same nimbleness of their competitors, thereby creating better choices for consumers.

28. Perhaps Home Telephone Company, an OPASTCO member LEC serving rural areas in South Carolina, best expresses the current feeling of paralysis among RoR carriers:

...many competitors in nearby BellSouth service areas could quickly expand to our service area, to compete for larger, more lucrative customers. We also continue to lose large customers due to pricing inflexibility inherent in an overly regulated industry. In order to be competitive and maintain our long-term viability, RoR LECs must have the flexibility to meet customer needs and to begin positioning themselves to meet existing and future competitive threats.<sup>49</sup>

29. OPASTCO would therefore urge the Commission to immediately adopt pricing flexibility measures concurrent with the first Order in this proceeding so that RoR LECs can begin to address the competition that they face today. The Commission should also quickly begin a new proceeding to address alternative forms of regulation for RoR LECs that better comport with the "pro-competitive, deregulatory national policy framework" that Congress sought to establish in the 1996 Act.

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<sup>47</sup> NPRM, para. 95.

<sup>48</sup> USTA SPR Affidavit, pp. 20-21.

<sup>49</sup> Home, p. 7.

#### **IV. CONCLUSION**

30. Commenters in this proceeding have expounded on the many differences between RoR and price cap LECs. These differences will necessarily require rules for RoR LECs that diverge from the access reform adopted for price cap carriers, including measures that ensure rate comparability and affordability as well as the monitoring and enforcement of long distance geographic rate averaging. It will also require the concurrent adoption of pricing flexibility measures that will allow RoR LECs to fairly compete for the few high-volume customers that help to support universal service in rural areas. By adopting the recommendations herein, as well as those discussed in OPASTCO's initial comments, the Commission will fashion access rules that are truly beneficial to RoR LECs and that provide them with the tools necessary to continue providing high quality, affordable, modern telecommunications services to all in their service areas.

Respectfully submitted,

**THE ORGANIZATION FOR THE  
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September, 17, 1998

## **CERTIFICATE OF SERVICE**

I, Tiffani N. Belk, hereby certify that a copy of OPASTCO's comments was sent on this, the 17th day of September, 1998 by United States mail, first class, postage prepaid, to those listed on the attached sheet.

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